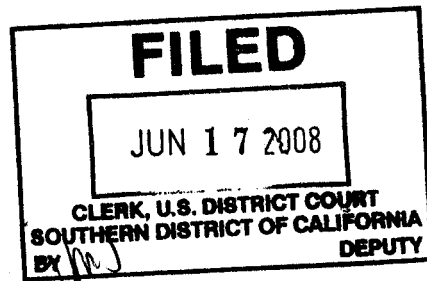


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8 UNITED STATES DISTRICT COURT
 9 SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,)

Magistrate Case No. 08MJ1721

11 Plaintiff,)

**STIPULATION OF FACT AND JOINT
 MOTION FOR RELEASE OF
 MATERIAL WITNESS(ES) AND
 ORDER THEREON**

12 v.)

13 FRANCISCO GARCIA-RODRIGUEZ (2),)

14 Defendant.)

(Pre-Indictment Fast-Track Program)

15
 16 **IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES
 17 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and James P.
 18 Melendres, Assistant United States Attorney, and defendant FRANCISCO GARCIA-RODRIGUEZ,
 19 by and through and with the advice and consent of defense counsel, Jose C. Rojo, that:

20 1. Defendant agrees to execute this stipulation on or before the first preliminary hearing
 21 date and to participate in a full and complete inquiry by the Court into whether defendant knowingly,
 22 intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead
 23 guilty to the pre-indictment information charging defendant with a non-mandatory minimum count
 24 of Inducing and Encouraging Illegal Aliens and Aiding and Abetting, in violation of 8 U.S.C.
 25 § 1324(a)(1)(A)(iv) and (v)(II).

26 //

27 //

28 JPME:lg:6/11/08

1 2. Defendant acknowledges receipt of a plea agreement in this case and agrees to
2 provide the signed, original plea agreement to the Government not later than five business days
3 before the disposition date set by the Court.

4 3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or
5 before **July 2, 2008**

6 4. The material witnesses, Marina Franco-Flores and Vicente Flores-Gaxiola, in this
7 case:

8 a. Are aliens with no lawful right to enter or remain in the United States;

9 b. Were induced or encouraged by defendant and codefendant Yovani Audelo-
10 Ceja, to enter the United States in violation of the law on or about May 30, 2008, by presenting an
11 I-551 Resident Alien card to an immigration inspector and claiming that the card belonged to them,
12 when in fact, it did not;

13 c. Were found in a vehicle driven by codefendant Yovani Audelo-Ceja at or near
14 the San Ysidro, California, Port of Entry (POE), and that defendant knew or acted in reckless
15 disregard of the fact that they were aliens with no lawful right to enter or remain in the United
16 States;

17 d. Were paying or having others pay on their behalf \$200 up to an unknown
18 amount to others to be brought into the United States illegally and/or transported illegally to their
19 destinations therein; and,

20 e. May be released and remanded immediately to the Department of Homeland
21 Security for return to their country of origin.

22 5. After the material witnesses are ordered released by the Court pursuant to this
23 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any
24 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any
25 proceeding, including, but not limited to, motion hearings, trial, sentencing, appeal or collateral
26 attack, that:

27 a. The stipulated facts set forth in paragraph 4 above shall be admitted as
28 substantive evidence;

1 b. The United States may elicit hearsay testimony from arresting agents
2 regarding any statements made by the material witness(es) provided in discovery, and such
3 testimony shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements
4 against interest of (an) unavailable witness(es); and,

5 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),
6 "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted
7 and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant
8 waives the right to confront and cross-examine the material witness(es) in this case.

9 6. By signing this stipulation and joint motion, defendant certifies that defendant has
10 read it (or that it has been read to defendant in defendant's native language). Defendant certifies
11 further that defendant has discussed the terms of this stipulation and joint motion with defense
12 counsel and fully understands its meaning and effect.


13 Based on the foregoing, the parties jointly move the stipulation into evidence and for the
14 immediate release and remand of the above-named material witness(es) to the Department of
15 Homeland Security for return to their country of origin.

16 It is STIPULATED AND AGREED this date.


17 Respectfully submitted,

18 KAREN P. HEWITT
19 United States Attorney

20 Dated: 6/18/08.

21 
22 JAMES P. MELENDRES
23 Assistant United States Attorney

24 Dated: 6-16-08.

25 
26 JOSE C. ROJO
27 Defense Counsel for
28 FRANCISCO GARCIA-RODRIGUEZ

29 Dated: 6-17-08.

30 
31 FRANCISCO GARCIA-RODRIGUEZ
32 Defendant

ORDER

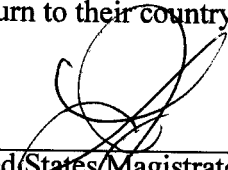
Upon joint application and motion of the parties, and for good cause shown,

THE STIPULATION is admitted into evidence, and,

IT IS ORDERED that the above-named material witness(es) be released and remanded forthwith to the Department of Homeland Security for return to their country of origin.

SO ORDERED.

Dated: 6/17/09.



United States Magistrate Judge